

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 07-08

4/24/07
— Denied (no second
to motion
to approve)

AN ORDINANCE ADOPTING FINDINGS TO GRANT A BALLOT MEASURE 37 WAIVER OF THE TIGARD DEVELOPMENT CODE WETLAND REGULATIONS FOR THE .41 ACRE SITE ON GREENBURG ROAD, SOUTH OF HIGHWAY 217 (WCTM 1S135CA, TAX LOT 02800) SUBJECT TO APPLYING FOR AND RECEIVING SITE DEVELOPMENT REVIEW APPROVAL (M372006-00007).

WHEREAS, the voters of the State of Oregon passed Ballot Measure 37 in 2004; and

WHEREAS, Ballot Measure 37 provides the responsible governing body to either pay compensation for reduced property value or waive the regulations where property is owned prior to the adoption of land use regulations; and

WHEREAS, a claim was made by E & V Development Co. in the amount of \$398,150.00 as the net difference in the value of the property under the Tigard Development code in place in September 1979; and

WHEREAS, E & V Development Co. has owned the property since September 1979 preceding the adoption of regulations limiting development within wetlands.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The attached staff report (**Attachment 2**) and applicant's materials (**Attachment 4**) are hereby adopted as findings.

SECTION 2: A waiver from the City of Tigard wetland regulations is hereby granted to E & V Development Co. to allow construction of a four-plex. E & V Development Co. may apply for Site Development Review under all non-wetland regulations in place on the date of application. Once the property is developed, it may continue to be used as developed, even if there are changes in ownership or tenants. Once E & V Development Co. ceases to be the owner, expansions or major modification beyond development applied for during this ownership shall be subject to the land use regulations in effect at the time of application.

SECTION 3: This waiver applies to 11040 SW Greenburg Road; WCTM 1S135CA, Tax Lot 02800.

SECTION 4: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2007.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2007.

Craig Dirksen, Mayor

Approved as to form:

City Attorney

Date

Agenda Item:

Hearing Date:

April 24, 2007

Time: 7:30 PM

**STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



180-DAY CLAIM PROCESSING PERIOD = 6-2-2007

SECTION I. CLAIM SUMMARY

FILE NAME: E&V DEVELOPMENT PROPERTY COMPENSATION CLAIM
CITY CASE NO: MEASURE 37 CLAIM (M37) M372006-00007

**CLAIMANT/
OWNER:** E&V Development (E. & V. Davis)
10875 SW 89th Avenue
Tigard, OR 97223

**CLAIMANT'S
REPRESENTATIVE** Not Applicable.

CLAIM: The claimant seeks to build a four plex (rowhouses). The applicant alleges that wetland regulations restrict the use of the property. The amount claimed as compensation without waiver of regulations is \$398,156.

**AFFECTED
REGULATION:** Applicable wetland regulations under TDC 18.775.

**ZONING
DESIGNATION:** R-12: Medium-Density.

LOCATION: 11040 SW Greenburg Road; WCTM 1S135CA, Tax lot 02800.

**APPLICABLE
CODE CRITERIA:** Municipal Code Chapter 1.20.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the City Council review the following report and determine whether the claim is valid. Staff further recommends that City Council opt for a waiver of the City's wetland regulations.

SECTION III. BACKGROUND

The subject parcel is .41 acres and contains lawn area and driveway to the Ash Creek Park Condominiums. Other than the adjacent condominiums on a separate parcel, no development applications have been made for this particular parcel.

SECTION III. APPLICABLE CRITERIA AND FINDINGS

Section 1.20.030 states a property owner wishing to make a claim against the City under Measure 37 shall first submit a claim to the City. A claim under Measure 37 must be in writing and include:

A. Identification of the affected property. Identification may be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.

The claimant identifies the property as indicated previously and also designated as Tax lot 02800, WCTM 1S135CA, 11040 SW Greenburg Road.

B. The name and contact information of the person making the claim, the date the Claimant acquired the property, and, if applicable, the date that a family member of Claimant acquired the property and the names and relationships of family members that are previous owners.

The name and contact information of the persons making the claim is Eugene and Vivian Davis as E&V Development, 10875 SW 89th Avenue, Tigard, OR, 97223 (503-246-5862). The property was acquired by the claimants in June, 1967. They submitted a copy of a warranty deed that shows the property was conveyed to E&V Development on December 24, 1979.

C. A list of all persons with an ownership interest in or a lien on the property.

No Title Report was submitted. See B. above.

Identification of the regulation that is alleged to restrict the use of the affected property and a statement describing how the restriction affects the value of the property.

The claimant only lists wetlands regulations and that they wish to build a four plex (rowhouses) next to the condominiums. Since the claim is not specific to individual wetlands regulations, it can be assumed that all City wetland regulations are claimed. It is important to note that there is no specific wetlands delineation to determine the extent of limitation. Normally, wetlands are delineated as part of a land use application. Generalized City wetland maps indicate that a portion of the property is likely in wetland. Without a specific delineation, however, the boundary cannot be determined nor can the impact of the wetlands regulations. It must also be pointed out that waiver of City wetland regulations does not provide the claimant waiver of other jurisdiction wetland regulations. This could include the Oregon Division of State Lands, the US Army Corps of Engineers and Washington County Clean Water Services. Attachment #3 is a copy of the generalized location of wetlands as shown on City maps.

E. A statement whether the Claimant prefers compensation or a waiver, suspension or modification of the regulation, and a statement describing the extent to which the regulation would need to be waived, suspended or modified to avoid the need for compensation. A description of the proposed use must be provided.

Under claim preference, the claimant lists only "We want to build a four plex (rowhouses next to our condos that we built)". This implies they would prefer a waiver.

F. The amount claimed as compensation and documentation supporting the amount. The documentation shall include a market analysis, an appraisal, or other documentation at least equivalent to a market analysis.

The claimant claimed \$398,150 as compensation but did not provide documentation supporting the amount.

G. The name and contact information of the Claimant's authorized representative or representatives, if applicable.

No representative is listed. Only E&V Development (Gene Davis) 10875 SW 89th Avenue, Tigard, OR 97223, 503-246-5862 is listed.

Section 1.20.080 outlines the criteria for making a decision on the compensation claim. In deciding the claim, the Decision Maker may take any of the following actions:

Deny the claim based on any one or more of the following findings:

a. The regulation does not restrict the use of the private real property.

Without a wetland delineation, it is impossible to determine how wetland regulations limit the property. The City's wetland regulations, however, are restrictive in some circumstances. City wetland mapping indicates that the property is impacted by a designated significant wetland. Landform alterations or development is not allowed within significant wetlands. As a result, the regulations will likely impact the ability to develop a four plex to some extent.

b. The fair market value of the property is not reduced by the passage or enforcement of the regulation.

The claimant has only indicated a claim of \$398,150. It is unclear whether this is a claim for the prohibition of all development or a limitation on the development. If the wetland regulations actually impact the development potential, it can then be deduced that the fair market value was reduced. How much or to what extent cannot be determined without a plan and application of the wetland regulations and how they interface with other land use regulations.

c. The claim was not timely filed.

The claim was filed on December 4, 2006 which was the last day to file a claim two years after the passage of Measure 37.

d. The Claimant is not the current property owner.

While no title report was provided, the claimant indicated purchase of the property in June, 1967 and the transfer of the property to E&V Development in 1979. Both of these dates precede the current wetland regulations.

e. The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.

The City was incorporated in 1961. Wetland regulations did not exist in the development code in 1967. Wetland regulations were not adopted until 1983 and have been amended numerous times since then.

f. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing.

While there may be some argument that regulations protecting wetlands and natural areas are nuisance related, they have not been litigated with respect to Measure 37.

g. The regulation is required by federal law.

Other jurisdictions such as the US Army Corps of Engineers and the Oregon Division of State Lands have established wetland regulations that are different yet complimentary to the City of Tigard wetland regulations. The Claimant must either comply with other regulations or file claims where appropriate. We have no information whether claims were filed at the State or County level. Measure 37, however, does not apply to federal regulations.

h. The regulation protects public health and safety.

Wetland regulations help to maintain the integrity of rivers, stream and creek systems by minimizing pollution, promoting bank stability, maintaining and enhancing water quality and fish and wildlife habitats. These may be partially related to public health and safety but once again have not been litigated with respect to Measure 37.

i. The City is not the entity responsible for payment. The City is not responsible if the challenged law, rule, ordinance, resolution, goal or other enactment was not enacted or enforced by the City.

The City has enacted wetland regulations which may impact the property in question.

j. The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.

No detailed development plan or land use proposal has been reviewed or final action taken on to apply the challenged regulations. The City could force the claimant to apply by denying the claim. The claimant then has the option of making application which then provides two years from the date of the decision to file a claim or to go directly to circuit court for a determination.

k. The City has not established a fund for payment of claims under Measure 37.

No such fund has been established at this time.

l. The Claimant is not legally entitled to compensation for a reason other than those listed in subsections a through k.. The basis for this finding must be clearly explained.

Staff finds no other reasons, aside from those already listed, to deny the claim.

2. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose. The City may require any person receiving compensation to sign a waiver of future claims for compensation under Measure 37 and the City may record that waiver with the County Recorder.

The City Council will need to make a determination of whether funds may be appropriated to pay any valid claim. To pay an alternative monetary claim would require an appraisal of the impact of the regulations and there is no way to determine how that alternative would relate to this claim.

3. Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property.

The City Council shall decide whether to pay the claim or waive the regulation. Staff recommends that should a waiver be granted, it shall run with the person, not the land, and shall be a specific exemption to the City wetland regulations.

4. Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be for the specific property only unless the City follows the procedure for a legislative land use decision.

Waiving wetlands regulations will still require the claimant to meet other jurisdiction requirements and the remainder of the City land use regulations.

5. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the claim was filed. The specified date shall allow the City time to process the contributions and pay compensation.

No contributions for compensation have been identified at this time.

The Decision Maker may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The Decision Maker may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the Decision Maker directs staff to negotiate, the matter shall be set for further action by the Decision Maker no less than 175 days from the date of the notice of claim became complete. The Council shall take final action within 180 days of the claim. The Decision Maker shall take actions 2 through 5 only if it determines the claim is valid.


Given the date of this analysis, it is impossible to enter a process of resolution and resolve the claim within 180 days. The staff recommendation suggests waiver of the City's wetland regulations. The claimant should file a development application and apply according to all regulations except those relating to City wetland regulation. Requirements of other jurisdictions must be completed by the claimant.

A decision by a Decision Maker other than Council shall not be a final decision, but shall be a recommendation to Council.

This report represents only a recommendation to the City Council and is not a final decision of the City.

SECTION IV. CONCLUSION

Staff finds that it is possible that wetland regulations could restrict the development of the parcel in question. With respect to that, it is suggested that the City wetland regulations be waived. An ordinance adopting the staff report and establishing a waiver of the wetland regulations of 18.775 of the Tigard Development code has been prepared for Council Consideration.


PREPARED BY: Cheryl Caines
Assistant Planner

March 26, 2007
DATE


APPROVED BY: Dick Bewersdorff
Planning Manager

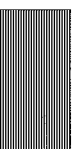
March 26, 2007
DATE

VICINITY MAP

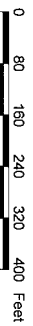
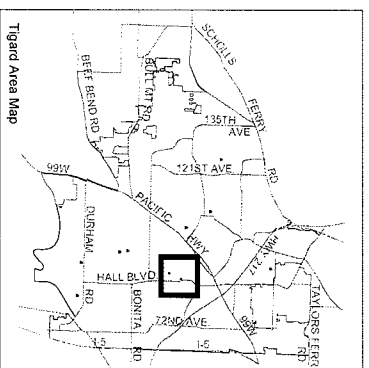
M372006-00007

E & V DEVELOPMENT
MEASURE 37 CLAIM

LEGEND:



Subject Site



Information on this map is for general location only and should be verified with the Development Services Division

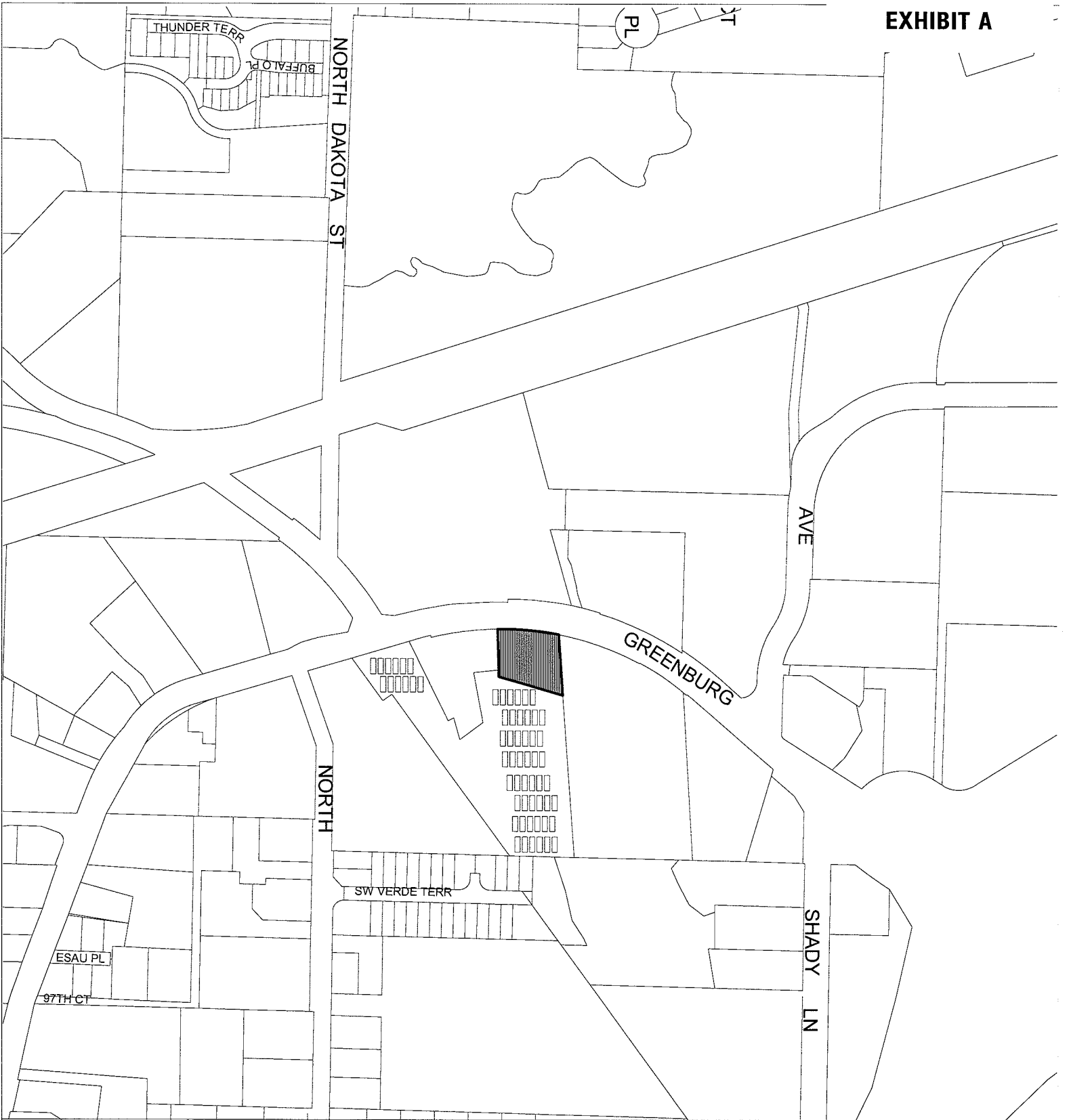
13125 SW Hall Blvd

Tigard, OR 97223

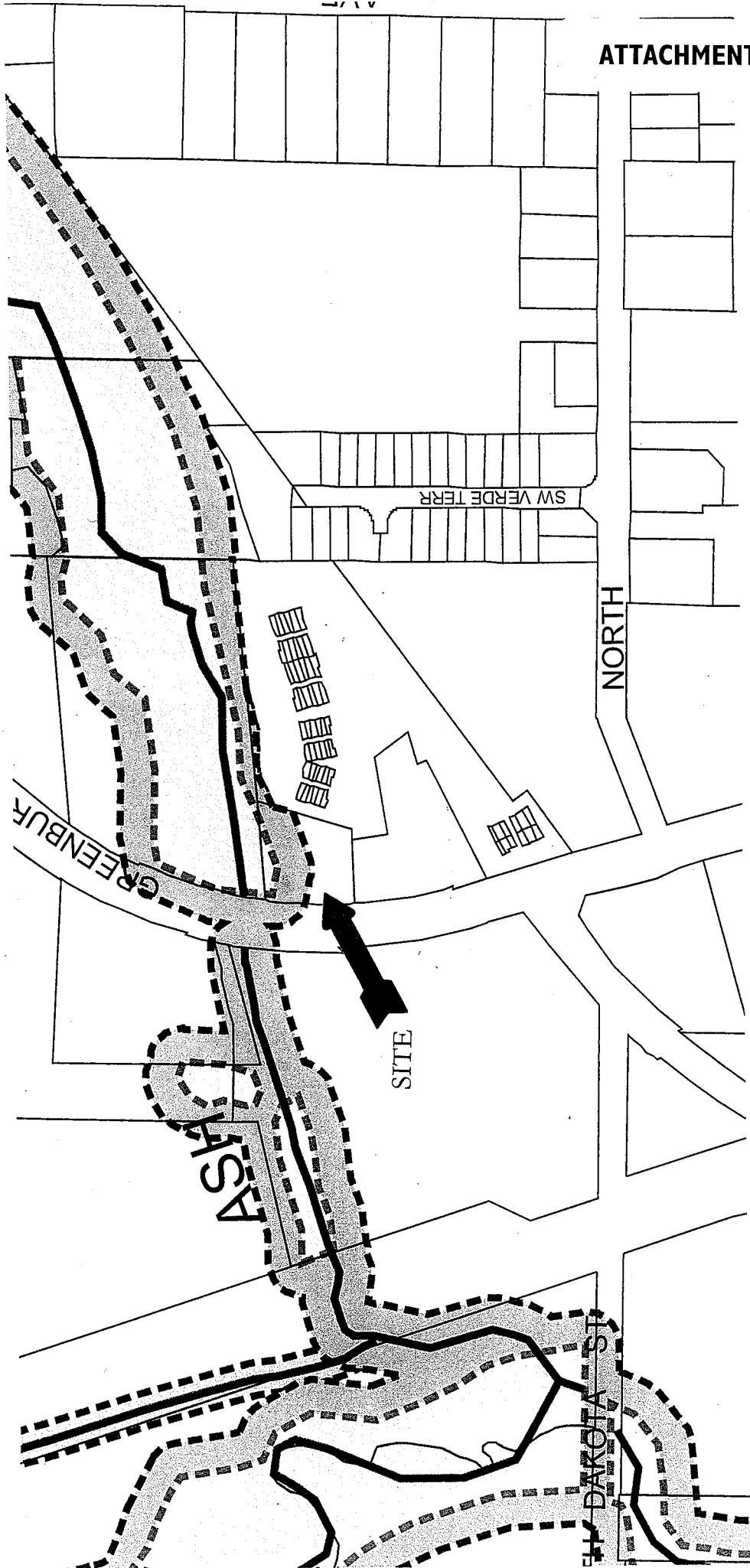
(503) 639-4171

<http://www.ci.tigard.or.us>

EXHIBIT A



ATTACHMENT 3



- Wetlands
- NON-SIGNIFICANT
 - SIGNIFICANT
 - Tigard Riparian Setback
 - USA Water Quality Buffer

City of Tigard
Geographic Information System
Long Range Planning Division,
Community Development Department



PROCEDURE FOR BALLOT MEASURE RECEIVED COMPENSATION CLAIM

DEC 04 2006

City of Tigard Permit Center 13125 SW Hall Blvd., Tigard, OR 97223

Phone: 503.639.4171 Fax: 503.598.1960

CITY OF TIGARD
PLANNING/ENGINEERING

The claim must be in writing and include the information listed below. The claim shall not be considered filed until all of the requirements of the procedure are met.

FOR STAFF USE ONLY

Case No.: 14372006-00007

Application Accepted By: _____

Date: 12/4/06

Date Determined Complete: _____

Deposit: \$1,000 (Deposit to be refunded if claim is determined to be valid. If claim is denied and ultimately determined invalid, the claimant shall reimburse the City for the costs the City incurs in processing the claim. If reimbursement exceeds the deposit, the claimant shall pay any additional amount within 30 days of a demand by the City for full payment. If costs are less than the deposit, the difference will be refunded to the claimant.)

IDENTIFICATION OF AFFECTED PROPERTY

Property Street Address/Location(s): 11646 S.W. Greenburg Rd.Tax Map & Tax Lot # (s): 15135 CASubdivision Lot # (s): 02800

CLAIMANT INFORMATION

Property Owners/Claimants/Deed Holders*: E. + V. Development Center DavisAddress: 16875 S.W. 87th Ave Phone: 503-246-5862City/State: Tigard OR Zip: 97223
(Attach list if more than one)Date Claimant Acquired Property: June 1949

Date Family Member of Claimant Acquired Property (if applicable): _____

Names and Relationships of Family Members that are Previous Owners (if applicable): _____

(Attach list if additional space is needed)

Lien/Security Interest Holders of the affected property: _____

Address: _____ Phone: _____

City/State: _____ Zip: _____

(Attach list if more than one)

* When the owner and the applicant are different people, all owners of the affected property must sign this application in the space provided on the back of this form. If the affected property is owned by two or more persons and not all owners seek compensation, all owners who do not seek compensation shall sign a waiver of the right to compensation.

REGULATION RESTRICTING USE

Identify the regulation that is alleged to restrict use of affected property. Provide a statement describing how the restriction affects the value of the property. (Attach additional materials as necessary)

Wetland Regulation

CLAIM PREFERENCE

Provide a statement of whether claimant prefers compensation or a waiver, suspension, or modification of the regulation.

We want to build a fourplex - 4 row houses next to our condos that we built

Include a statement describing the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation. A description of the proposed use must be provided. (Attach additional materials as necessary)

AMOUNT OF COMPENSATION

The amount claimed as compensation: \$398,156

Provide documentation supporting the amount. Said documentation shall include a market analysis, appraisal, or other documentation at least equivalent to a market analysis.

Claimants' Authorized Representative(s) if applicable.

SIGNATURES of each owner of the subject property.

DATED this 4th day of Dec, 2006

Vivian M. Davis
Owner's Signature

Cheryl D. Davis
Owner's Signature

Owner's Signature

Owner's Signature



CITY OF TIGARD
13125 SW Hall Blvd.
Tigard, OR 97223 503.639.4171

12/5/2006
8:15:25AM

Receipt #: 2720060000000005706

Date: 12/05/2006

Line Items:

Case No	Tran Code	Description	Revenue Account No	Amount Paid
M372006-00007		[M37-CD] Measure 37 Deposit	100-0000-229080	1,000.00
Line Item Total:				\$1,000.00

Payments:

Method	Payer	User ID	Acct./Check No.	Approval No.	How Received	Amount Paid
Check	GENE DAVIS/VIVIAN M DAVIS	ST	1198		In Person	1,000.00
Payment Total:						\$1,000.00

CITY OF TIGARD
ORDINANCE NO. 04-13

AN ORDINANCE AMENDING ORDINANCE 04-12 PROVIDING A PROCESS FOR CONSIDERATION OF CLAIMS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, ADDING A NEW CHAPTER 1.20 TO THE TIGARD MUNICIPAL CODE, AND DECLARING AN EMERGENCY.

WHEREAS, on November 23, 2004, the City Council adopted Ordinance No. 04-02 without incorporating the written Exhibit A that had been distributed and directed that a revised Exhibit A be prepared to include specific changes; and

WHEREAS, a revised Exhibit A has been prepared that includes the changes requested by the Council; now, therefore;

THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Ordinance 04-12 is hereby amended by adding an Exhibit A to that ordinance in the form of the attached Exhibit A. The Tigard Municipal Code is consequently amended as provided in Ordinance 04-12 and Exhibit A.

SECTION 2: Because this ordinance is necessary for the preservation of the health, safety and welfare of the City, an emergency is declared to exist and this ordinance shall be in full force and effect immediately on passage.

PASSED: By majority vote of all Council members present after being read by number and title only, this 14th day of December, 2004.

Catherine Wheatley
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 14th day of December, 2004.

C. A. Dirksen
Craig Dirksen, Mayor

Approved as to form:

Smith V. Kern
City Attorney

12.14.04

EXHIBIT A
TO CITY OF TIGARD ORDINANCE NO. 04.13

PROVIDING A PROCESS FOR CONSIDERATION OF CLAIMS FOR COMPENSATION UNDER 2004 BALLOT MEASURE 37, INCLUDING A PROVISION FOR ACTION BY NEIGHBORING PROPERTY OWNERS, ADDING A NEW CHAPTER 1.20 TO THE TIGARD MUNICIPAL CODE.

Chapter 1.20 Compensation for Reduction in Property Value

1.20.010 Purpose

The purpose of this Chapter is to provide procedures and standards for claims for compensation made pursuant to 2004 Measure 37.

1.20.020 Definitions

As used in this chapter, unless the context requires otherwise:

"Affected property" means the private real property that is alleged to have suffered a reduction in fair market value as result of the City's regulation restricting the use of that property and for which a property owner seeks compensation for the reduction in value.

"Claimant" means the property owner who submits a claim for compensation under Measure 37 in accordance with Section 1.20.030.

"Decision Maker" means the City Council or any person, board, commission, or other entity to whom the Council has delegated authority to make decisions on Measure 37 claims.

"Regulation" shall mean a provision of the City's comprehensive plan, Community Development Code and transportation ordinances.

"Restricts the use of property" means prohibiting a particular use of the property or making that use only permissible under certain conditions. Regulations requiring or setting fees to be charged are not restrictions on the use of property.

"Manager" means City Manager or designee.

1.20.030 Claims

A. A property owner wishing to make a claim against the City under Measure 37 shall first submit a written claim to the City. A claim under Measure must be in writing and include:

1. Identification of the affected property. Identification may be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.
2. The name and contact information of the person making the claim, the date the Claimant acquired the property, and, if applicable, the date that a family member of Claimant acquired the property and the names and relationships of family members that are previous owners.
3. A list of all persons with an ownership interest in or a lien on the property.
4. Identification of the regulation that is alleged to restrict the use of the affected property and a statement describing how the restriction affects the value of the property.
5. A statement whether the Claimant prefers compensation or a waiver, suspension or modification of the regulation, and a statement describing the extent to which the regulation would need to be waived, suspended or modified to avoid the need for compensation. A description of the proposed use must be provided.
6. The amount claimed as compensation and documentation supporting the amount. The documentation shall include a market analysis, an appraisal, or other documentation at least equivalent to a market analysis.
7. The name and contact information of the Claimant's authorized representative or representatives, if applicable.

1.20.040 Notice

The City shall provide notice of the hearing required by Section 1.20.070 to all owners of the property, lien holders and security interest holders, record owners of property within 500 feet of the property, recognized community participation organizations for the area the property is located, and anyone who has requested notice at least 7 days before the hearing. The notice shall identify the property, state the date, time and place of the hearing, state the amount of the claim or statement describing the extent to which the regulations would need to be waived or suspended, the City contact person and phone number, advise of the availability of the staff report and summarize the hearing procedures and nature of the claim. Failure of any person to receive notice or any defect in the notice shall not invalidate any action taken or decision made at the hearing.

1.20.050 Staff Report

City staff shall prepare a report analyzing the claim. The staff report may be reviewed by the Community Development Director, Finance Director, and Manager before being submitted to the Decision Maker.

The staff report shall be submitted to the Decision Maker, mailed to the Claimant, and made available to the public at least 7 days before the public hearing required by Section 1.20.070.

1.20.060 Decision Maker Proceedings

The Decision Maker shall hold a public hearing on the claim. The public hearing should normally be set within 150 days of submission of the claim but may be set at any time. The Decision Maker may hold an executive session on the claim at any time.

1.20.070 Public Hearing

The Claimant and any other person shall be provided a reasonable opportunity to present evidence and argument at the public hearing. The Decision Maker may limit the duration of testimony.

1.20.080 Decision Maker Decision

In deciding the claim, the Decision Maker may take any of the following actions:

1. Deny the claim based on any one or more of the following findings:
 - a. The regulation does not restrict the use of the private real property,
 - b. The fair market value of the property is not reduced by the passage or enforcement of the regulation.
 - c. The claim was not timely filed.
 - d. The Claimant is not the current property owner.
 - e. The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.
 - f. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing.
 - g. The regulation is required by federal law.
 - h. The regulation protects public health and safety.
 - i. The City is not the entity responsible for payment. The City is not responsible if the challenged law, rule, ordinance, resolution, goal or other enactment was not enacted or enforced by the City.

- j. The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.
 - k. The Claimant is not legally entitled to compensation for a reason other than those listed in subsections a through g. The basis for this finding must be clearly explained.
 - l. The City has not established a fund for payment of claims under Measure 37.
2. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose. The City may require any person receiving compensation to sign a waiver of future claims for compensation under Measure 37 and the City may record that waiver with the County Recorder.
 3. Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property.
 4. Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be for the specific property only unless the City follows the procedure for a legislative land use decision.
 5. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the claim was filed. The specified date shall allow the City time to process the contributions and pay compensation.

The Decision Maker may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The Decision Maker may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the Decision Maker directs staff to negotiate, the matter shall be set for further action by the Decision Maker no less than 175 days from the date of the notice of claim became complete. The Council shall take final action within 180 days of the claim. The Decision Maker shall take actions 2 through 5 only if it determines the claim is valid.

A decision by a Decision Maker other than Council shall not be a final decision, but shall be a recommendation to Council.

1.20.090 Delegation of Authority and City Council Review

The Council may delegate authority to act as a Decision Maker to any person, board, commission or other entity by motion, resolution or ordinance. The Council shall review all recommendations of the Decision Maker and make the final decision. If a Decision Maker other than Council has made a recommendation to Council, Council may act on the recommendation by motion or order without a Council hearing. The Council may approve recommendations on its consent agenda.

1.20.100 Action by Neighboring Property Owners

If a Claim results in a waiver of enforcement of a regulation and the development allowed by the waiver causes a reduction in value of other property located in the vicinity of the Claimant, those property owners shall have the right to maintain an action against the Claimant in state circuit court to recover the amount of the reduction. The nearby property owners, if successful, shall be entitled to an award of reasonable attorney fees. This section does not create a right of action against the City.

1.20.110 Authority

The City Council shall have the authority to take the actions listed in Section 1.20.080, including the authority to waive or suspend any provision of any City code, ordinance or resolution, notwithstanding any inconsistent provision in this code or the Community Development Code. The City may retain an appraiser to assist the Decision Maker or Council determination.

1.20.120 Deposit and Responsibility for Costs

The Claimant shall provide a deposit of \$1,000 at the time the claim is filed with the City. If the claim is determined to be valid, the City shall refund the entire deposit. If a claim is denied and ultimately determined to be invalid, the Claimant shall reimburse the City for the costs the City incurred in processing the claim. If the amount of reimbursement exceeds the cost of deposit, the Claimant shall pay any additional amounts within 30 days of a demand by the City for full reimbursement. If the amount of reimbursement is less than the deposit, the City shall refund the difference to the Claimant. The City shall provide an invoice detailing its costs when demanding additional reimbursement or providing a partial refund.

1.20.130 Severability

If any section, phrase, clause, or part of this Chapter is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

WARRANTY DEED—STATUTORY FORM

79039753

EUGENE L. DAVIS and VIVIAN DAVIS

conveys and warrants to E.S.V. DEVELOPMENT CO., an Oregon corporation
Grantee, the following described real property
free of encumbrances except as specifically set forth herein situated in Washington County, Oregon, to-wit:

See Exhibit A attached hereto and by this reference made a part hereof.

Recorded by
Chicago Title
79-30052

IN WAKE OF THE ABOVE, CERTAIN DESCRIPTION ON REVERSE SIDE
The said property is free from encumbrances except

The true consideration for this conveyance is \$300,000.00 (Here comply with the requirements of ORS 93.030)

Dated this 26th day of September, 1979

Eugene L. Davis
Vivian Davis



STATE OF OREGON, County of Multnomah,) ss. September, 1979

Personally appeared the above named EUGENE L. DAVIS and VIVIAN DAVIS

and acknowledged the foregoing instrument to be their voluntary act and deed.

Before me:

Notary Public for Oregon—My commission expires: 1/3/81

WARRANTY DEED

Eugene and Vivian Davis
E.S.V. Development Co.
4550 S.W. Lombard Street
Beaverton, Oregon 97005

Now residing at:

Brian Steenson
705 Standard Plaza
Portland, Oregon 97204

NAME, ADDRESS, ZIP

shall a change is executed, all fee statements
shall be sent to the following address:

c/o E.S.V. Development Co.
4550 S.W. Lombard Street
Beaverton, Oregon 97005

NAME, ADDRESS, ZIP

STATE OF OREGON



County of Washington

By _____ Recording Officer
Deputy

1-4

Real Property, situated in the County of Washington, State of Oregon, described as follows:

Parcel I

Beginning at the Southwest corner of the D. C. Graham Donation Land Claim No. 52 in Township 1 South, Range 1 West of the Willamette Meridian, Washington County, Oregon, and running thence East along the South line of said donation land claim, 1007.9 feet to the Southeast corner of that certain tract of land conveyed to Andrew Wormsberg by deed as recorded on page 9 of Volume 201 of Washington County, Oregon Deed Records, which point is the true point of beginning of the herein described tract of land, and which point is on the Northernly boundary line of the Oregon Electric Railway right of way; thence from the above described point of beginning, South 53° 04' West along the Northernly boundary line of said Oregon Electric right of way 212.4 feet to the most Southernly corner of said Wormsberg tract; thence North 20° 55' West 84.1 feet to a re-entrant corner in said Wormsberg tract; being the Northeast corner of tract conveyed to Hargrove by deed recorded on page 17, Book 94, Deed Records of Washington County, Oregon; thence along the North line of said Hargrove tract South 78° 25' West 175.5 feet to the Southeast corner of that certain 0.0622 acre tract which was conveyed to Herwickia Rue; thence along the East line of said Rue tract North 5° 58' West 59.1 feet to an iron at the Northeast corner of said Rue tract; thence along the North line of said Rue tract, South 86° 23' West 98.5 feet and thence North along the West line of said Wormsberg tract and in said County Road 140.7 feet to a point; thence North 85° 00' East 515.9 feet to an iron pipe on the East line of said Wormsberg tract; thence South 0° 26' West 115.2 feet to the true point of beginning of this description.

Parcel II

Beginning at the Southwest corner of the D. C. Graham Donation Land Claim No. 52 in Township 1 South, Range 1 West of the Willamette Meridian, Washington County, Oregon, and running thence East along the South line of said donation land claim, 1007.9 feet to an iron pipe; thence North 0° 26' East 457.7 feet to the Southeast corner of that certain tract of land conveyed to Andrew Wormsberg by deed as recorded on page 9 of Volume 201 of Washington County, Oregon, Deed Records, which point is on the Northernly boundary line

of the Oregon Electric Railway right of way; thence South 53° 04' West along the Northerly boundary line of said Oregon Electric right of way, 272.4 feet to the most Southerly corner of said Wormsberg tract and the true point of beginning of the tract herein described; thence North 20° 55' West 84.1 feet to a re-entrant corner in said Wormsberg tract; being the Northeast corner of tract conveyed to Hargrove by deed recorded on Page 17, Book 84, Deed Records of Washington County, Oregon; thence along the North line of said Hargrove tract South 78° 20' West 88.48 feet to the Northeast corner of that certain tract described in deed to M. C. Hargrove recorded in said Hargrove tract South 37° 03' East 105.75 feet to an iron pipe on the North line of said Oregon Electric Railway right of way; thence North 52° 57' East, 2.57 feet to the true point of beginning.

Parcel III

Beginning at an iron pipe in the County Road which is located 485.44 feet East and 171.95 feet North of the Southwest corner of the D. C. Graham Donation Land Claim No. 52, in Section 35, Township 1 South, Range 1 West of the Willamette Meridian, Washington County, Oregon; thence North 62° 26' East 235.54 feet to an iron pipe; thence North 25° 2-1/2' West 14.40 feet to an iron pipe; thence North 73° 17-1/2' East 40.08 feet to an iron pipe; thence South 37° 03' East 40.23 feet to an iron pipe on the Northerly line of the abandoned Oregon Electric Railway; thence North 52° 57' East along said Northerly right of way line to a point on the East line of that tract described in deed from Frederick Greenberg, et ux. to The Oregon Electric Railway Co., recorded January 18, 1907, in Book 72, Page 582, Deed Records; thence South along said East line to the center line of said abandoned railroad right of way, said point being the most Northerly corner of Parcel II described in deed from Mabel I. Simpson, and husband to Henrietta W. Rue, recorded December 10, 1949, in Book 302, Page 33, Deed Records; thence South 52° 57' West along the center line of said abandoned right of way to the most Westerly corner of said Parcel II described in said deed to Henrietta W. Rue; thence South 37° 03' East along the Westerly line of said Parcel II, 25 feet to the Northerly line of said abandoned right of way, said point being the most Northerly corner of Parcel I described in said deed to Henrietta W. Rue; thence South 52° 57' West along the Southerly line of said abandoned right of way, 150.5 feet to the center line of the County Road; thence North 20° 37' West along the center line of the County Road; to the Northerly line of said abandoned right of way, said point being the Southwest corner of that tract described in deed from Jessie Simonson and husband to Mabel I. Simpson, recorded August 25, 1944, in Book 224, Page 125, Deed Records; thence continuing along the

EXHIBIT A

Page 2

center of the County Road, North 29°37' West 55.50 feet to the point of beginning EXCEPTING THEREFROM that portion conveyed to Fred Greenberg, et ux, to Washington County, for road purposes, by deed recorded November 7, 1994, in Book 40, Page 456, Deed Records.

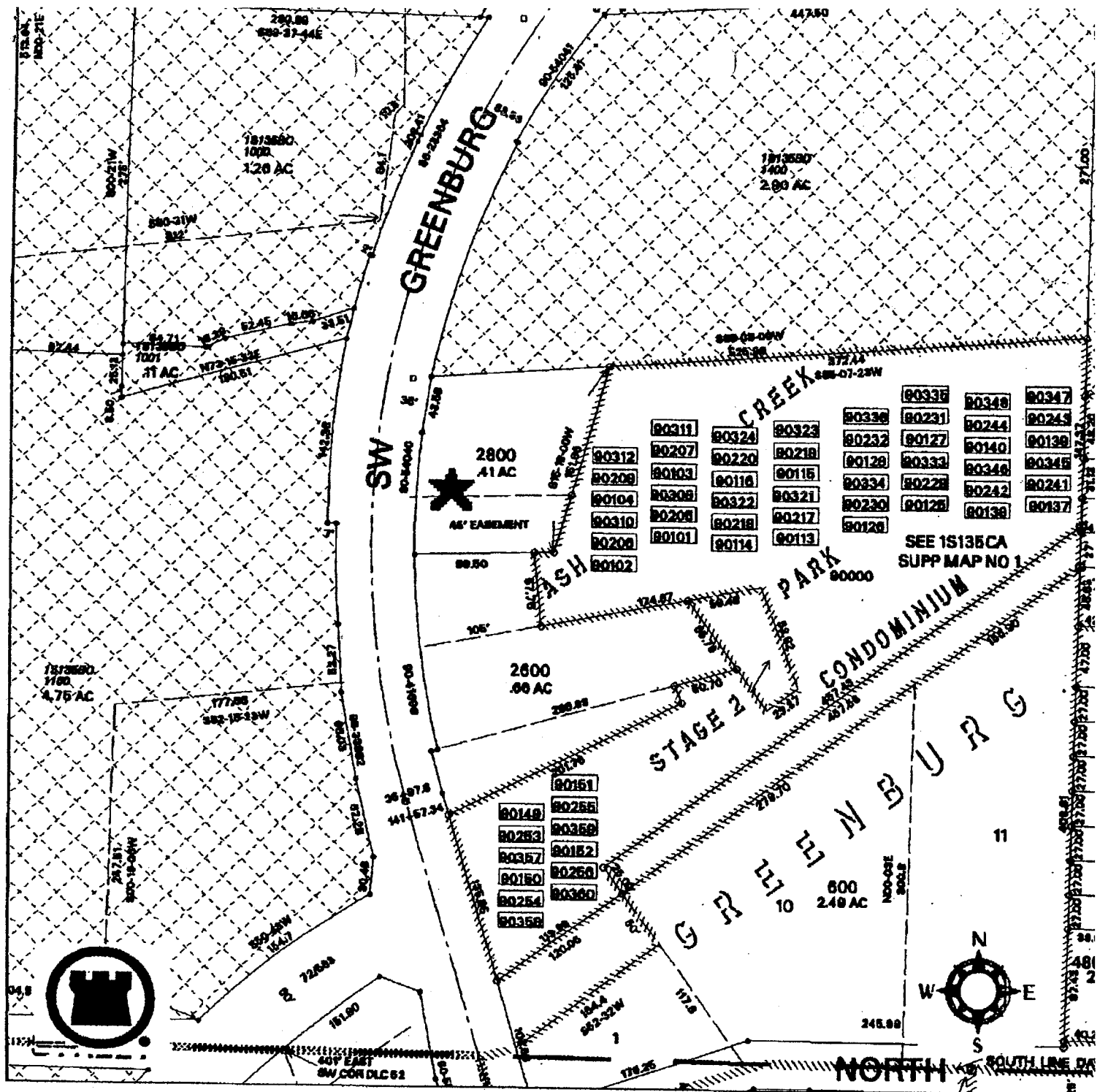
STATE OF OREGON
County of Washington

I, Roger [illegible] of Oregon
and [illegible] do hereby certify that
the within and foregoing is a true and
correct copy of the original of
the [illegible] of [illegible]



INDEXED

3-11-95



"This plat is for your aid in locating your land with reference to streets and other parcels. While this plat is believed to be correct, the company assumes no liability for any loss occurring by reason of reliance thereon."

Map No. 1S135CA 02800
CHICAGO TITLE INSURANCE COMPANY
10135 S.E. SUNNYSIDE ROAD Suite 200
CLACKAMAS, OREGON 97015

7/1/06 TO 6/30/07 REAL PROPERTY TAX STATEMENT

WASHINGTON COUNTY OREGON * 155 N FIRST AVE., RM 130 * HILLSBORO, OREGON 97124

PROPERTY DESCRIPTION

MAP: 1S135CA-02800

ACCOUNT NO: R272957

SITUS: 11040 SW GREENBURG RD,
ACRES .41

CODE AREA: 023.81

2006-2007 CURRENT TAX BY DISTRICT:

COLL-PORTLAND	0.48
ESD-NW REGIONAL	0.26
SCHOOL - TIGARD	8.51
SCH-TIGARD/TUAL/AFTER LOL	0.00
EDUCATION TAXES:	\$9.25

WASHINGTON COUNTY	4.16
REG-METRO SERVICE	0.18
PORT-PORTLAND	0.13
FIRE-TV FIRE & RESCUE	2.82
CITY-TIGARD	4.65
TV FIRE & RESCUE LOL	0.46
GENERAL GOVERNMENT TAXES:	\$12.40

BOND-WASHINGTON COUNTY	0.37
BOND-METRO SERVICE DIST	0.34
BOND-PCC	0.38
BOND-SD #23-TIGARD	1.65
BOND- TV FIRE & RESCUE	0.08
BOND-CITY OF TIGARD	0.40
BOND-TRI-MET	0.18
SCH-TIGARD/TUALATIN-AFTER	1.46
BOND AND MISC TAX:	\$4.86

2006-07 TAX (Before Discount) \$26.51

VALUES:	LAST YEAR	THIS YEAR
MARKET VALUES:		
LAND	1,850	1,850
STRUCTURE	0	0
TOTAL RMV VALUE	1,850	1,850

TAXABLE VALUES:		
ASSESSED VALUE	1,850	1,850

PROPERTY TAXES: \$27.60 \$26.51

APPEAL DEADLINE	January 2nd, 2007
Value Questions	Call 503-846-8826
Tax Questions	Call 503-846-8801
Personal Property Questions	Call 503-846-8741
Other Questions	Call 503-846-8741

PROPERTY TAX PAYMENT OPTIONS

(See back of Statement for payment instructions.)

Pay	Due	Discount	Net Amount Due
In Full	11/15/06	0.80	\$25.71
2/3	11/15/06	0.35	\$17.33
1/3	11/15/06	NONE	\$8.84

PLEASE MAKE PAYMENT TO: Washington County Tax

Make Online Payments at:

<https://ecomm.co.washington.or.us/propertytax>

Pay by Phone at: (888) 510-9274

DELINQUENT TAXES:

NO DELINQUENT TAXES DUE

(See back for explanation of taxes marked with an asterisk (*).
Delinquent Tax Total is included in payment options to the left.)

TOTAL (After Discount): \$25.71
All Payments Processed Upon Receipt

FMF 53800

paid 11-7-06
#2688

E & V DEVELOPMENT CO
10875 SW 89TH AVE
TIGARD, OR 97224

last year 26.77